IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3661 OF 2005

Saraswati Rajkumar Shahu ...Applicant
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri. Girish Kulkarni for the Applicant.
Ms Rajeshree Gadhvi, A.P.P. for the State.
Shri. H.V. Palwe for the Respondent Nos.2 and 3.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 29, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. This Application is made under section 407 of the Code of Criminal Procedure, 1973 praying for transfer of a case under sections 312 and 376 of the Indian Penal Code pending before the Sessions Court at Pune to the Sessions Court at Mumbai. The Application is made by the mother and natural guardian of the prosecutrix.

2. It is stated that age of the prosecutrix is only sixteen years. The Respondent Nos.2 and 3 are the accused. The offence relates to the year 2003. The ground of transfer is that the prosecutrix is resident of Mumbai and all prosecution witnesses are residing at Mumbai. It is contended that age of the prosecutrix is only sixteen years and as there is a threat to her life, it will not be possible for the prosecutrix to freely depose before the Court at Pune. It is stated that the Respondent Nos.2 and 3 have

criminal antecedents. It is stated that the Applicant is sick and suffering from various ailments and therefore, it is not possible for the Applicant to travel alongwith the prosecutrix. The learned Counsel for the Applicant submitted that considering the aforesaid grounds, order of transfer may be passed.

3. The Respondent Nos.2 and 3 have filed a reply. In the said reply, allegations regarding threat to the life of the prosecutrix are denied. It is said in the reply that almost all witnesses are residents of Pune and reliance is placed on a chart annexed to the reply. It is alleged that the Applicant herself is having criminal record and she is involved in offences of theft. The learned A.P.P. submitted that necessary protection will be given to the prosecutrix and other prosecution witnesses and therefore, there is no reason for transfer.

4. I have considered the submissions. A chart has been annexed to the affidavit in reply. The chart contains names of more than thirty witnesses. The said chart discloses that one witness is from Mumbai, one is from Sangli and two are from Satara and all other witnesses are from Pune. It is, therefore, obvious that case cannot be transferred on the ground of convinience of the witnesses.

5. An assertion has been made that there is threat to the life of the prosecutrix. Except for bald statement, no specific instances of such threats have been pleaded by the Applicant. The offence is allegedly committed in June, 2003. No particulars of threats received by the prosecutrix have been incorporated in the Application. As far as criminal antecedents of the Respondent Nos.2 and 3 are concerned, that by itself is no ground for transfer. The learned A.P.P. has assured that the necessary protection will be given to the prosecutrix.

6. As of today, there is no material on record to show that any threat has been given to the prosecutrix. Therefore, no case is made out for transfer as of today. However, the State will provide necessary police protection to the prosecutrix when she travels from Mumbai to Pune for recording her evidence. The learned Sessions Judge will ensure that the evidence of the prosecutrix is recorded in-camera and as far as possible, the recording of the evidence should be completed on one particular date.

7. Hence, I pass the following order:

: O R D E R :

i) Application is rejected. However, State is directed to ensure that the necessary protection is given to the prosecutrix when she travels from Mumbai to Pune for purposes of attending the case. The learned Sessions Judge will ensure that the evidence of the prosecutrix is recorded in-camera and as far as possible, the recording of evidence of the prosecutrix is completed on the same day on which recording of her evidence commences.

ii) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE